

§416.1124 Unearned income we do not count.

(a) *General.* While we must know the source and amount of all of your unearned income for SSI, we do not count all of it to determine your eligibility and benefit amount. We first exclude income as authorized by other Federal laws (see paragraph (b) of this section). Then we apply the other exclusions in the order listed in paragraph (c) of this section to the rest of your unearned income in the month. We never reduce your unearned income below zero or apply any unused unearned income exclusion to earned income except for the \$20 general exclusion described in paragraph (c)(12) of this section.

(b) *Other Federal laws.* Some Federal laws other than the Social Security Act provide that we cannot count some of your unearned income for SSI purposes. We list the laws and the exclusions in the appendix to this subpart which we update periodically.

(c) *Other unearned income we do not count.* We do not count as unearned income—

(1) Any public agency's refund of taxes on real property or food;

(2) Assistance based on need which is wholly funded by a State or one of its political subdivisions. (For purposes of this rule, an Indian tribe is considered a political subdivision of a State.) Assistance is based on need when it is provided under a program which uses the amount of your income as one factor to determine your eligibility. Assistance based on need includes State supplementation of Federal SSI benefits as defined in subpart T of this part but does not include payments under a Federal/State grant program such as Temporary Assistance for Needy Families under title IV-A of the Social Security Act;

(3) Any portion of a grant, scholarship, fellowship, or gift used or set aside for paying tuition, fees, or other necessary educational expenses. However, we do count any portion set aside or actually used for food or shelter;

(4) Food which you or your spouse raise if it is consumed by you or your household;

(5) Assistance received under the Disaster Relief and Emergency Assistance Act and assistance provided under any

Federal statute because of a catastrophe which the President of the United States declares to be a major disaster. See §416.1150 for a more detailed discussion of this assistance, particularly the treatment of in-kind support and maintenance received as the result of a major disaster;

(6) The first \$60 of unearned income received in a calendar quarter if you receive it infrequently or irregularly. We consider income to be received infrequently if you receive it only once during a calendar quarter from a single source and you did not receive it in the month immediately preceding that month or in the month immediately subsequent to that month. We consider income to be received irregularly if you cannot reasonably expect to receive it.

(7) Alaska Longevity Bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985: met the 25-year residency requirement for receipt of such payments in effect prior to January 1, 1983; and was eligible for SSI;

(8) Payments for providing foster care to an ineligible child who was placed in your home by a public or private nonprofit child placement or child care agency;

(9) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become a part of the separate burial fund. (See §416.1231 for an explanation of the exclusion of burial assets.) This exclusion from income applies to interest earned on burial funds or appreciation in the value of excluded burial arrangements which occur beginning November 1, 1982, or the date you first become eligible for SSI benefits, if later;

(10) Certain support and maintenance assistance as described in §416.1157;

(11) One-third of support payments made to or for you by an absent parent if you are a child;

(12) The first \$20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of another (see §416.1131) and income based on need. Income based on need is a benefit that uses financial need as

Social Security Administration

§416.1124

measured by your income as a factor to determine your eligibility. The \$20 exclusion does not apply to a benefit based on need that is totally or partially funded by the Federal government or by a nongovernmental agency. However, assistance which is based on need and funded wholly by a State or one of its political subdivisions is excluded totally from income as described in §416.1124(c)(2). If you have less than \$20 of unearned income in a month and you have earned income in that month, we will use the rest of the \$20 exclusion to reduce the amount of your countable earned income;

(13) Any unearned income you receive and use to fulfill an approved plan to achieve self-support if you are blind or disabled and under age 65 or blind or disabled and received SSI as a blind or disabled person for the month before you reached age 65. See §§416.1180 through 416.1182 for an explanation of plans to achieve self-support and for the rules on when this exclusion applies;

(14) The value of any assistance paid with respect to a dwelling unit under—

(i) The United States Housing Act of 1937;

(ii) The National Housing Act;

(iii) Section 101 of the Housing and Urban Development Act of 1965;

(iv) Title V of the Housing Act of 1949; or

(v) Section 202(h) of the Housing Act of 1959;

(15) Any interest accrued on and left to accumulate as part of the value of an excluded burial space purchase agreement. This exclusion from income applies to interest accrued on or after April 1, 1990;

(16) The value of any commercial transportation ticket, for travel by you or your spouse among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift by you or your spouse and is not converted to cash. If such a ticket is converted to cash, the cash you receive is income in the month you receive the cash;

(17) Payments received by you from a fund established by a State to aid victims of crime;

(18) Relocation assistance provided you by a State or local government that is comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 that is subject to the treatment required by section 216 of that Act;

(19) Special pay received from one of the uniformed services pursuant to 37 U.S.C. 310;

(20) Interest or other earnings on a dedicated account which is excluded from resources. (See §416.1247);

(21) Gifts from an organization as described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code, to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition. We will exclude any in-kind gift that is not converted to cash and cash gifts to the extent that the total gifts excluded pursuant to this paragraph do not exceed \$2000 in any calendar year. In-kind gifts converted to cash are considered under income counting rules in the month of conversion;

(22) Interest and dividend income from a countable resource or from a resource excluded under a Federal statute other than section 1613(a) of the Social Security Act; and

(23) AmeriCorps State and National and AmeriCorps National Civilian Community Corps cash or in-kind payments to AmeriCorps participants or on AmeriCorps participants' behalf. These include, but are not limited to: Food and shelter, and clothing allowances;

(24) Any annuity paid by a State to a person (or his or her spouse) based on the State's determination that the person is:

(i) A veteran (as defined in 38 U.S.C. 101); and

- (ii) Blind, disabled, or aged.

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IN-KIND SUPPORT AND MAINTENANCE

§ 416.1130 Introduction.

(a) *General.* Both earned income and unearned income include items received in kind (§ 416.1102). Generally, we value in-kind items at their current market value and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food or shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (§§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones receives an SSI benefit which is computed by subtracting one-third from the Federal benefit rate. This one-third represents the value of the income he receives because he lives in the household of a son who provides both food and shelter (in-kind support and maintenance). In January, we increase his SSI benefit because of a cost-of-living adjustment. We base his SSI payment for that month on the food and shelter he received from his son two months earlier in November. In determining the value of that food and shelter he received in November, we use the Federal benefit rate for January.

(b) *How we define in-kind support and maintenance.* In-kind support and maintenance means any food or shelter that

is given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement. A business arrangement exists when the amount of monthly rent required to be paid equals the current market rental value (see § 416.1101). *Exception:* In the States in the Seventh Circuit (Illinois, Indiana, and Wisconsin), a business arrangement exists when the amount of monthly rent required to be paid equals or exceeds the presumed maximum value described in § 416.1140(a)(1). In those States, if the required amount of rent is less than the presumed maximum value, we will impute as in-kind support and maintenance, the difference between the required amount of rent and either the presumed maximum value or the current market value, whichever is less. In addition, cash payments to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance.

(c) *How we value in-kind support and maintenance.* Essentially, we have two rules for valuing the in-kind support and maintenance which we must count. The one-third reduction rule applies if you are living in the household of a person who provides you with both food and shelter (§§ 416.1131 through 416.1133). The presumed value rule applies in all other situations where you are receiving countable in-kind support and maintenance (§§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These are discussed in §§ 416.1141 through 416.1145.

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§ 416.1131 The one-third reduction rule.

(a) *What the rule is.* Instead of determining the actual dollar value of in-